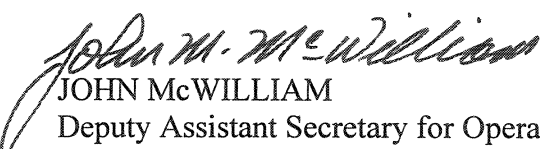




SEP - 8 2005

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
DIRECTORS FOR VETERANS' EMPLOYMENT AND
TRAINING

FROM: 
JOHN McWILLIAM
Deputy Assistant Secretary for Operations and Management

SUBJECT: Mobilizations for Hurricane Katrina Relief Efforts

REFERENCE: Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-4334; Public Health Security and Bioterrorism Preparedness and Response Act of 2002, §102(a), P.L. 107-188; 42 U.S.C. § 300hh-11(e); 10 U.S.C. § 101(d)(5); 32 U.S.C. §§ 316, 502, 504, 505; 38 U.S.C. § 4303(13)

1. Purpose: To remind VETS staff that employment and reemployment protections under USERRA extend to the following:

A. Persons activated to serve as intermittent disaster-response appointees under the National Disaster Medical System (NDMS) for the current (and other) public health emergencies; and

B. Members of the National Guard mobilized under "State" orders that cite sections 316, 502, 503, 504, or 505 of title 32 U.S. Code.

2. Background:

A. The Emergency Response to Hurricane Katrina. In response to the ongoing emergency situation in the Gulf Coast States, numerous teams of volunteers in the National Disaster Medical System (NDMS) and members of the National Guard have been activated and deployed to provide assistance. The NDMS, originally a part of the Department of Health and Human Services, is now housed within the Department of Homeland Security's (DHS) Federal Emergency Management Administration (FEMA). The National Guard mobilizations are under the command and control of State authorities, but are authorized by Federal orders.

B. National Guard Mobilized under "State" Orders that Cite Sections 316, 502, 503, 504, or 505 of title 32 U.S. Code. Under 38 U.S.C. 4303(13), USERRA coverage extends to anyone who has performed "service in the uniformed services." Among other things, this provision states that the phrase "service in the uniformed services" includes "full-time National Guard duty." The term "full-time National Guard duty," in turn, includes "training or other duty, other than inactive

duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States." See 10 U.S.C. 101(d)(5). As a result, service by National Guard members who receive orders in response to Hurricane Katrina relief efforts under these provisions of title 32 qualifies as "full-time National Guard duty" and is thus covered under USERRA.

C. Service by Intermittent Disaster-response Appointees under the NDMS. Section 102(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, P.L. 107-188, codified at 42 U.S.C. § 300hh-11(e), extended USERRA protections during certain public health emergencies by providing that the phrase "service in the uniformed services" includes individuals who perform service as intermittent disaster-response appointees when the NDMS has been activated as well as individuals who participate in certain authorized training. It is important to understand that USERRA's discrimination protections apply to such service as well as its reemployment rights. Employers must not discriminate against persons who perform, have performed, have obligations to perform, or apply to perform protected NDMS service, and they must reemploy eligible individuals at the conclusion of their service. In addition to USERRA's employment and reemployment rights, these individuals are also entitled to USERRA's procedures for assistance and enforcement.

3. Action:

A. VETS staff should take every opportunity to inform the employer community about the USERRA protections that may apply during a public health emergency. This issue is expected to be addressed in the forthcoming final USERRA regulations. Should there be any question as to whether or not a particular individual or claimant is performing "service in the uniformed services" as an intermittent disaster-response appointee or is participating in an authorized training program so as to trigger coverage under USERRA, VETS staff should either contact FEMA directly, or contact Kenan Torrans at (202) 693-4731.

B. VETS staff should take every opportunity to inform the employer community about the USERRA protections afforded National Guard forces mobilized under Federal authority but under State control in support of Hurricane Katrina relief efforts. VETS staff should respond appropriately on receiving complaints and requests for technical assistance, and should verify that the orders under which National Guard members are mobilized make reference to the applicable sections of Titles 32.

4. Effective Date: Immediately

5. Inquiries: Direct questions on this Memorandum to Kenan Torrans (202) 693-4731, Bo Wroble (404) 562-2305, or Rob Wilson (202) 693-4719.

Expiration Date: Indefinite